IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 954 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMUBEN DAHYABHAI KAPADIA
Versus
PRAMODCHANDRA SHIVLAL PATEL

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Appearance :

M/S.VYAS ASSOCIATES for the applicant
MR BS PATEL for the opponent

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 28/02/2006

ORAL JUDGMENT

By filing this revision under Section 115 of the Code of

Civil Procedure, the petitioner – original defendant of Special Civil Suit No.67 of 2000 has prayed for quashing and setting aside the order passed by the learned trial Court below Exhibit 13 in Special Civil Suit No.67 of 2000.

2 The petitioner herein is the original defendant of that suit and the said suit is filed by original plaintiff, Pramodchandra Shivlal Patel for getting decree for specific performance of suit agreement. In the said suit, the application Exhibit 13 was given by the defendant under Order 7 Rule 11(D) of the Code of Civil Procedure for rejecting the plaint on the ground that the suit is time-barred and that no specific averments have been made in the suit that the plaintiff is ready and willing to perform his part of the contract.

3 It is stated by the applicant in his application at Exhibit 13 that as per the agreement dated 4.5.1992, remaining consideration of Rs.20,000/- was required to be paid within six months from the date of the agreement. It is the say of the applicant that since the suit is not filed within the limitation period as per Article 54 of the Limitation Act, the plaint is required to be rejected. It is also averred by the applicant in his application that since there is no specific averment in the plaint that the plaintiff is ready and willing to perform his part of the contract, the suit is required to be dismissed as it is the mandatory requirement of law to make such averment in a suit for specific performance.

4 The learned trial Judge after hearing both the sides and after considering the record came to the conclusion that the

parties entered into agreement on 4.5.1992 and looking to the relationship between the parties and considering the fact that since they were staying in the same house, at this juncture, it cannot be said that the time for executing the sale deed was not extended as according to the learned Judge there was a stipulation in the agreement that the time for performance of the contract can be extended by mutual consent. The learned trial Judge found that whether the time was extended or not for the performance of the contract, the Court is required to consider the evidence on record, if led by the parties. The Court found that without recording the evidence, at this juncture, straightaway it is not possible to come to the conclusion that the suit is time-barred. The learned Judge also found that actual date regarding fixation of the performance of the agreement cannot be decided without adducing the evidence in the matter. Regarding the submission of the applicant of Exhibit 13 that the suit is required to be dismissed for want of averment in the plaint about the readiness and willingness to perform the part of the contract is concerned, the readiness and willingness cannot be treated as a straight jacket formula. This aspect is required to be considered on the basis of entirety of the facts and circumstances of the case. The learned trial Judge found that the plaintiff gave a notice to the defendant to perform the obligation lies on her part and the same is also produced along with the suit. It is also mentioned in the same that the plaintiff is and was willing to pay the remaining amount of Rs.25,000/- of the consideration of sale. The learned Judge has found that when the plaintiff has shown his readiness and willingness to perform his part of the contract and when the notice issued by the plaintiff to the defendant

was part of the pleadings, on that ground, the suit is not required to be dismissed at threshold without trying the same. In my view, it cannot be said that the learned Judge has committed any error of jurisdiction in passing the impugned order. In its limited jurisdiction under Section 115 of the Civil Procedure Code this Court is required to see whether any jurisdictional error is committed by the trial Court. The learned Judge has rightly found that in view of the decision of the Apex Court in the case of Rameshchandra Chandiol v. Chunnilal Sabartal, AIR 1971 SC 1238, the readiness and willingness cannot be attributed as straight-jacket formula and it is to be decided from the facts and circumstances of the case. Considering the aforesaid aspect of the matter, no interference of this Court in its revisional exercise of the jurisdiction is called for against an interlocutory order of the trial Court. It is, however, clarified that ultimately, at the time of the deciding the suit the Court shall consider all these points after the evidence is available on the record. The impugned order of the trial Court below Exhibit 13 is to be considered only as an order for the purpose of deciding the said interim application and the points regarding readiness and willingness as well as limitation will be decided after framing appropriate issues in this behalf, if such issues arise out of the pleadings. The observation of the trial Court at the time of passing the order below Exhibit 13 or the observations made by this Court in this revision application is to be treated only for the purpose of deciding the application Exhibit 13.

In view of what has been stated herein above, the revision application is rejected. Rule is discharged. Interim relief stands

vacated.

No order as to costs.

(P.B.Majmudar, J.)

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